

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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|                                      |   |                            |
|--------------------------------------|---|----------------------------|
| IN THE MATTER OF THE PROPOSED        | ) | NOTICE OF SPECIAL          |
| ADOPTION OF A NEW RULE               | ) | RULES HEARING              |
|                                      | ) | NO. 121                    |
| IN RE: EXPANDED MEDIA COVERAGE OF    | ) |                            |
| TRIAL COURT PROCEEDINGS PROPOSAL #1  | ) | IN RE:                     |
|                                      | ) | EXPANDED MEDIA COVERAGE OF |
| IN RE: EXPANDED MEDIA COVERAGE OF    | ) | TRIAL COURT PROCEEDINGS    |
| TRIAL COURT PROCEEDINGS PROPOSAL #2  | ) |                            |
|                                      | ) |                            |
| IN THE MATTER OF THE PROPOSED        | ) |                            |
| AMENDMENT OF CANON 3(B)(13) OF THE   | ) |                            |
| CODE OF JUDICIAL CONDUCT, SDCL 16-2, | ) |                            |
| APPX., RELATING TO MEDIA COVERAGE IN | ) |                            |
| THE COURTROOM                        | ) |                            |
|                                      | ) |                            |

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Petitions for amendment of an existing section of the South Dakota Codified Laws and the adoption of new rules having been filed with the Court, and the Court having determined that the proposed amendment and adoptions should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON OCTOBER 7, 2010, at 9:00 A.M., C.S.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

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1. IN RE: EXPANDED MEDIA COVERAGE OF TRIAL COURT PROCEEDINGS.

1. Definitions

As used in these rules, the following terms mean:

- (a) "Judicial proceeding" or "proceeding" includes all public arguments, hearings, trials, or other proceedings before a trial court, except those specifically excluded by these rules. These rules do not apply to coverage of ceremonial or nonjudicial proceedings.

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- (b) "Expanded media coverage" includes audio or video recording or broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news and educational or instructional information to the public. Any other use, absent express written permission of the court is prohibited.
- (c) "Trial court" or the "court" means a South Dakota circuit or magistrate court in which a judicial proceeding is taking place.
- (d) "Media coordinator" means the circuit court administrator for the circuit in which judicial proceedings are taking place.

2. General

- (a) Expanded media coverage must be conducted in conformity with applicable statutes, rules, and caselaw.
- (b) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Rules of Professional Conduct governing trial publicity.
- (c) Except as otherwise provided by these rules, electronic recording by moving camera, still camera, and audio tape, and broadcasting is prohibited as to all judicial proceedings in a courtroom during sessions of a trial court. This prohibition does not apply to the use of cameras in a courtroom for courtroom security purposes, the videotaped or audio recording of proceedings to create the official record of a case, or to interactive video hearings.
- (d) If the court and all parties consent in writing or on the record at least one week prior to the commencement of a judicial proceeding, the court may authorize expanded media coverage of the proceeding under the conditions and standards set forth in these rules.

3. Conditions

- (a) There shall be no audio or video recording or broadcast in cases or proceedings not accessible to the public.
- (b) Audio or video recording or broadcast of judicial proceedings shall be limited to proceedings conducted

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within the courtroom and shall not extend to activities or events substantially related to the judicial proceedings that occur in other areas of the courthouse.

- (c) There shall be no audio or video recording or broadcast of jurors at any time during any judicial proceeding, including voir dire.
- (d) During or preceding a jury trial, there shall be no audio or video recording or broadcast of hearings that take place outside the presence of the jury unless the court and parties consent to coverage of such hearings. Such hearings include, but are not limited to, hearings to determine the admissibility of evidence and hearings to determine various motions such as motions to suppress evidence, for judgment of acquittal, in limine, and to dismiss.
- (e) There shall be no audio or video recording or broadcast of in-chambers conferences.
- (f) There shall be no audio or video recording or broadcast of conferences between the attorneys and their clients or co-counsel, or of sidebar conferences between the attorneys and the court.
- (g) There shall be no audio or video recording or broadcast within or from the courtroom during recesses or any other time the trial judge is not present and presiding.
- (h) There shall be no focusing on and photographing of materials on counsel or clerk tables or the judicial bench.
- (i) The courtroom shall not be used to conduct interviews before or after the judicial proceedings.
- (j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in any subsequent or collateral proceeding, including any retrial or appeal thereof, except by order of the court.
- (k) The quantity and type of equipment permitted in the courtroom shall be subject to the discretion of the court within the guidelines set out in these rules.

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- (l) Notwithstanding the provisions of these rules, the court, upon written application, may permit the use of equipment or techniques at variance with these rules, provided the application for variance is made at least three days prior to the scheduled judicial proceeding. Variances may be allowed by the court without advance application or notice if all counsel and parties consent.
- (m) It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures that meet the approval of the court prior to any coverage and without disruption to the court. The media coordinator will coordinate media coverage and act as liaison between the media and the court.
- (n) The court reserves the right to obtain, for historical purposes, a copy of any audio recordings, visual tape or film recordings or published photographs made of its proceedings. The media coordinator will be responsible for providing the court with this duplicate copy.
- (o) All expenses incurred in expanded media coverage of the judicial proceedings, including duplication of materials to provide to the court, shall be the responsibility of the news media.
- (p) Expanded media coverage may be provided only by persons or organizations that are part of the news media.
- (q) Under all circumstances, the court retains the discretion to exclude or terminate electronic coverage or broadcast of its proceedings. This discretion is not to be exercised in an effort to edit the proceedings, but where deemed necessary in the interests of justice or where these rules have been violated. This rule does not otherwise limit or restrict the first amendment rights of the news media to cover and report judicial proceedings.
- (r) The court shall retain ultimate control of the application of these rules over the broadcasting, recording or photographing of its proceedings. Any decision made by the court under these rules is final and not subject to appeal.
- (s) These rules are designed primarily to provide guidance to media and courtroom participants and are subject to modification by the court at any time.

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- (t) Failure to comply with the court's rules or orders regarding coverage and broadcast is punishable by sanction or contempt proceedings pursuant to South Dakota law.

4. Media Coordinator

The court and all interested members of the media shall work, whenever possible, with and through the media coordinator regarding all arrangements for expanded media coverage.

5. Standards

Media representatives providing expanded media coverage of a judicial proceeding shall comply with the standards for conduct and attire, technical standards and standards for equipment and pooling set forth in §§ 15-24-9, 15-24-11 and 15-24-12 with the following modifications:

- (a) Where those rules require approval of a matter by "the court" or the "Chief Justice," approval shall be obtained from the circuit or magistrate judge presiding over the judicial proceeding.
- (b) Video cameras, still cameras, and other equipment to be used by the media in the courtroom during judicial proceedings must not produce distracting light. No artificial lighting device of any kind shall be employed with a video camera or still camera.
- (c) Notwithstanding § 15-24-12(a), the number of video cameras in the courtroom shall be limited to one operated by not more than one cameraperson.
- (d) Notwithstanding § 15-24-12(b), the number of still camera photographers in the courtroom shall be limited to one who is allowed two camera bodies.
- (e) In addition to the pooling provisions in § 15-24-12(e), if there is no advance media agreement as to pooling arrangements, the court shall prohibit the media from the audio or video recording or broadcast of the judicial proceeding.
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2. PROPOSED ADOPTION OF NEW RULES GOVERNING EXPANDED MEDIA COVERAGE OF TRIAL COURT PROCEEDINGS.

1. Definitions

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Terms used in these rules mean:

- (a) "Judicial proceeding" or "proceeding," includes all public arguments, hearings, trials, or other proceedings before a trial court, except those specifically excluded by these rules. These rules do not apply to coverage of ceremonial or nonjudicial proceedings.
- (b) "Expanded media coverage," includes audio or video recording or broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news and educational or instructional information to the public. Any other use, absent express written permission of the trial court, is prohibited.
- (c) "Trial court" or the "court" means a South Dakota circuit or magistrate court in which a judicial proceeding is taking place.
- (d) "Media coordinator," means the circuit court administrator for the circuit in which a judicial proceeding is taking place.

2. General

Expanded media coverage shall be permitted in South Dakota courtrooms and adjacent areas during a judicial proceeding, including recesses in such proceedings, under the following conditions:

- (a) News media interested in providing expanded media coverage of a judicial proceeding shall give advance notification of that interest to the media coordinator as required by these rules.
- (b) The court shall permit expanded media coverage of a judicial proceeding unless the court finds for reasons stated on the record that such coverage would materially interfere with the rights of the parties and the interests of justice.
- (c) The court shall prohibit expanded media coverage of any witness who objects to such coverage if the witness shows good cause for the objection and if no less restrictive alternative will resolve the objection. Less restrictive alternatives could include broadcasting only the victim's voice without televising the victim's face.

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- (d) The court shall prohibit expanded media coverage of any witness who is a victim of sexual abuse unless the witness consents to such coverage.
- (e) The court shall prohibit expanded media coverage of any witness who is a police informant, undercover agent, relocated witness, or the victim testifying in a prosecution for a crime of violence, if the witness shows that coverage of the witness's testimony would affect him or her differently than it would affect a member of the public in general.
- (f) The court shall prohibit expanded media coverage of any proceeding closed to the public or required to be held private by South Dakota law. For juvenile, termination of parental rights, adoption, or child custody cases, or cases involving trade secrets, that are otherwise open to the public or not required to be held private by South Dakota law, the court shall permit expanded media coverage only if the parties consent to it on the record.
- (g) Expanded media coverage shall not include coverage of jurors or jury selection, attorney-client conferences, discussions among co-counsel, or discussions between the court and counsel held at the bench.

3. Procedure

- (a) News media interested in providing expanded media coverage of any judicial proceeding must notify the media coordinator no later than fourteen business days before the proceeding. If there are less than fourteen business days between the date of scheduling of the proceeding and the date of the proceeding, the notice required by this rule shall be given as soon as practicable. For good cause shown, relief from this notification requirement may be granted by the court.
- (b) The media coordinator shall notify the clerk of the court that expanded media coverage of a proceeding is being requested and shall make all necessary assignments and arrangements if pool coverage is required.
- (c) A party to a proceeding objecting to expanded media coverage under these rules shall file a written objection with the clerk of the court, stating the grounds therefore, at least ten days prior to commencement of the proceeding. Time for filing objections may be extended or

reduced in the discretion of the court, which may also, in appropriate circumstances, extend the right of objection to persons other than the parties.

- (d) All objections to expanded media coverage shall be reviewed and determined by the court prior to commencement of the proceeding. Expanded media coverage of the proceedings shall not be limited by objection of parties or others except for good or legal cause shown that such coverage would materially interfere with the rights of the parties and the interests of justice.
- (e) Where expanded media coverage of a proceeding has been prohibited by a decision of the court, the clerk of the court shall notify the media coordinator who shall notify the appropriate media personnel prior to commencement of the proceeding.

4. Equipment and decorum

- (a) All equipment to be used by the media in the courtroom during judicial proceedings must be unobtrusive and must not produce distracting light or sound. All equipment shall be in place no less than fifteen minutes before the scheduled start of the proceeding. All equipment shall be operated from a fixed position designated by the court. Equipment shall be installed or removed only when the court is not in session.
- (b) The following limitations on the amount of equipment and number of media personnel in the courtroom shall apply:
  - (1) Video cameras. Not more than two video cameras, each operated by not more than one cameraperson, shall be permitted in the courtroom during a judicial proceeding. Where possible, recording and broadcast equipment that is not a component part of a video camera shall be located outside of the courtroom at a place designated by the court.
  - (2) Still cameras. Not more than two still camera photographers shall be permitted in the courtroom during a judicial proceeding. Each photographer will be allowed two camera bodies.
  - (3) Light. Only equipment which does not produce distracting light shall be permitted in the courtroom during a judicial proceeding. No flash bulbs, flash



devices or artificial lighting devices of any kind shall be employed with video or still cameras. With the approval of the court, modifications may be made to existing light sources in the courtroom (e.g., higher wattage light bulbs), provided such modifications are installed and maintained without public expense.

- (4) Audio. Audio recording shall be accomplished from any existing audio system present in the courtroom, with the court's approval, if such recording would be technically suitable for media use. No modifications of existing systems shall be made at public expense or without court approval. If the media representatives determine that the existing system does not produce sound of sufficient quality, they may provide equipment. All such equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the judicial proceedings being covered. Not more than one audio system shall be set up in the courtroom for media coverage of a judicial proceeding. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the courtroom at a place designated by the court.

- (c) Media personnel shall be properly attired and shall maintain proper decorum at all times when in court. Media personnel shall not move about the courtroom and shall not move in a way that distracts from the proceeding. Cell phones and pagers belonging to media personnel shall be turned off when in court.

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**3. Proposed Amendment of Canon 3(B)(13) of the Code of Judicial Conduct, SDCL Ch. 16-2, Appx., Relating to Media Coverage of the Courtroom.**

**Canon 3(B)(13), South Dakota Code of Judicial Conduct**

With the exception of the rules for expanded media coverage of appellate court proceedings and the rules for media coverage of trial court proceedings, a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions, except that a judge may authorize:

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- (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
- (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
- (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
  - (i) the means of recording will not distract participants or impair the dignity of the proceedings;
  - (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
  - (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
  - (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

SUPREME COURT  
STATE OF SOUTH DAKOTA  
**FILED**

JUN 30 2010

*Shirley A. Johnson-Lopez*  
Clerk

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Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the clerk of the Supreme Court no later than September 10, 2010.

Subsequent to the hearing, the Court may reject or adopt the proposed rule or any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by publication of this notice in the July, August and September 2010, State Bar Newsletters.

DATED at Pierre, South Dakota this 30th day of June, 2010.

BY THE COURT:

*David Gilbertson*  
David Gilbertson, Chief Justice

ATTEST:

*[Signature]*  
Clerk of the Supreme Court  
(SEAL)